

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

EMJ CORPORATION and
WESTCHESTER FIRE INSURANCE COMPANY

PLAINTIFFS

v.

CIVIL ACTION NO. 2:11-cv-00228-GHD-JMV

HUDSON SPECIALTY INSURANCE COMPANY

DEFENDANT

MEMORANDUM OPINION DENYING
PLAINTIFFS' MOTION TO ALTER OR AMEND JUDGMENT

Presently before the Court is a motion to alter or amend [180] the Court's Order and Final Judgment [179] filed by Plaintiffs EMJ Corporation and Westchester Fire Insurance Company ("Plaintiffs") pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. Defendant Hudson Specialty Insurance Company ("Defendant") has filed a response in opposition to the motion. Plaintiffs have filed a reply. The Court notes that on April 9, 2015 Defendant filed a notice of appeal [183] as to the Court's Order and Final Judgment [179], and on April 20, 2015, Plaintiffs filed a notice of cross appeal [185] as to the Court's Order and Final Judgment [179].

The Court acknowledges that the filing of the notice of appeal [183] and notice of cross appeal [185] may raise a question of this Court's jurisdiction. However, the Court is of the opinion that the notice of appeal [183] and notice of cross appeal [185] are ineffective and that the Court retains jurisdiction to rule on the motion to alter or amend [180]. *See Osterneck v. Ernst & Whinney*, 489 U.S. 169, 177, 109 S. Ct. 987, 103 L. Ed. 2d 146 (1989) ("Federal Rule of Appellate Procedure 4(a)(4) renders ineffective any notice of appeal filed while a Rule 59(e) motion is pending"). Accordingly, the Court has considered the parties' arguments pertaining to the motion to alter or amend [180]. The Court is of the opinion that the same is not well taken and should be denied.

A Rule 59 motion is the proper vehicle by which a party can “correct manifest errors of law or fact” or “present newly discovered evidence.” *Templet v. HydroChem Inc.*, 367 F.3d 473, 477 (5th Cir. 2004) (quoting *Waltman v. Int’l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989)). In the present Rule 59(e) motion, Plaintiffs ask the Court to reconsider its judgment against Defendant in the amount of \$666,666.67 plus post-judgment interest and reinstate its original judgment against Defendant in the amount of \$4,000,000.00 plus post-judgment interest. The Court is of the opinion that its memorandum opinion [178] and Order and Final Judgment [179] dated March 11, 2015 should stand, for the reasons stated in the memorandum opinion [178] and incorporated herewith.

ACCORDINGLY, the motion to alter or amend [180] the Court’s judgment filed by Plaintiffs EMJ Corporation and Westchester Fire Insurance Company is therefore DENIED.

A separate order in accordance with this opinion will issue this day.

THIS, the 16th day of April, 2015.



SENIOR U.S. DISTRICT JUDGE